

## APPENDIX I

Agenda of the May 27, 2003 Task Force Meeting.....	I-1
Final Minutes of the May 27, 2003 Task Force Meeting.....	I-2
Email from Gwen Pelletier with comments on the Draft report.....	I-29
Email from Al Lima with local responses to counting homeownership units.....	I-31



**Agenda**  
Chapter 40B Task Force  
May 27  
10 am to 12:30 pm

- Introductions
- Approval of Minutes

Discussion of solutions

- Counting of Homeownership Units
- Manufactured Housing
- Regional 40B Housing
- Changes to the Draft Report
- Rollout Schedule

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CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MAY 27, 2003 MEETING

Commission Members:

Jane Wallis Gumble	Task Force Chair, Director, DHCD
Fred Habib	Facilitator, Non-Voting member, Deputy Director, DHCD
Mark Bobrowski	Municipal Consultant, Professor, New England School of Law
Senator Harriette Chandler	(Absent) Senate Chair, HUD Committee
<i>Represented by Kevin Sanginario</i>	
Jack Clarke	Director of Advocacy, Massachusetts Audubon Society
Howard Cohen	Board Member, Citizens Housing & Planning Association
Representative Michael Coppola	Massachusetts House of Representatives
Marc Draisen	Executive Director, Metropolitan Area Planning Council
Steve Dubuque	President, Massachusetts Non-Profit Housing Association
Representative Robert Fennell	Vice Chair, HUD Committee
Thomas Gleason	Executive Director, MassHousing
Bennet Heart	Attorney, Conservation Law Foundation
Representative Kevin Honan	House Chair, HUD Committee
Michael Jaillet	MMA Housing Subcommittee
Al Lima	Planning Director, City of Marlborough
Bill McLaughlin	President, Rental Housing Association of the GBREB
Kathleen O'Donnell	Attorney, Kopelman & Paige
Gwen Pelletier	Board Member, Massachusetts Association of CDC's
Mayor Sharon Pollard	(Absent) City of Methuen
Jeff Rhuda	Homebuilders Association of Massachusetts
Representative Harriett Stanley	Massachusetts House of Representatives
Senator Bruce Tarr	(Absent) HUD Committee
Senator Susan Tucker	Massachusetts Senate
Senator Dianne Wilkerson	Massachusetts Senate
Clark Ziegler	Executive Director, Massachusetts Housing Partnership

Attendees (as documented on the sign-in sheet):

Judith Alland	MAPC
Arthur Bergeron	
Roger Blood	Brookline Housing Advisory Board
Karen Bresnahan	DHCD
Ben Fierro	Lynch and Fierro LLP
Anne Marie Gaertner	DHCD
Meredith Gallagher	Rierner & Braunstein
Paul Haverty	Regnante, Sterio and Osborne, LLP
Donna Kalikow	Town of Brookline
Don Martin	DHCD
Jacques Morin	Bayberry Building
Kristen Olsen	DHCD
Maureen O'Rourke	DHCD
Bill Reyelt	DHCD

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CHAPTER 40B TASK FORCE  
DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Bob Ruzzo	MassHousing
Melissa Santucci	Town of Burlington, Watertown ZBA
Lynn Sweet	LDS Consulting
Sarah B. Young	DHCD

Materials Distributed:

- Chapter 40B Task Force Draft Report to Governor Romney
- “Other Options” Appendix
- Email from Gwen Pelletier with comments on the Draft report
- Email from Al Lima with local responses to counting homeownership units

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CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MAY 27, 2003 MEETING

Introductions & Adoption of the May 20, 2003 Minutes:

Fred Habib, Deputy Director for DHCD and Task Force Facilitator brought the meeting to order and asked Task Force members to direct their attention to the Draft Minutes for the May 20<sup>th</sup>, 2003 Task Force meeting. He asked if any Task Force members would like to recommend changes to the minutes. No changes were requested and all Task Force members present voted in favor to adopt the May 20, 2003 meeting minutes

Mr. Habib noted that he was aware that since this was the last Task Force meeting some Task Force members may have some final comments, and he asked that these comments be held until the end of the meeting. He noted that the Task Force would first discuss the three issues from agenda and the relevant issues outside of 40B, then the draft report that had been distributed on Friday, and finally the rollout schedule.

Counting of Homeownership Units:

Mr. Habib noted a compromise for counting homeownership units had been proposed. He explained that this compromise would count homeownership units at double the rate they are counted at now, with a provision that no more than 100% of the units in the development could be counted. He noted that this would create an incentive for communities to negotiate more affordable units, since the additional affordable units would be counted. He also noted that there was a second idea which would allow income- verified manufactured homes in manufactured housing parks to count.

Gwen Pelletier, Board Member of the Massachusetts Association of CDCs, expressed concern that the housing units in vacation communities would be counted even if they are summer homes and not year round units.

Mr. Habib responded that units have to be year round housing units to be counted in the inventory.

Ms. Pelletier asked how the builder of the homeownership units would know whether or not the market-rate units are for first or second homes.

Mr. Habib responded that under 40B units must be built as year-round units, but that there was no way to account for year round residency.

Attorney Kathleen O'Donnell, of Kopelman & Paige, responded that as a condition of the comprehensive permit the initial sales could be controlled to be the primary residence of the homebuyers. She emphasized that this was really the only time that the market rate units could be somewhat controlled and that to expect anything more was impractical.

Ms. Pelletier noted that this wouldn't create a meaningful addition to the affordable units in vacation communities on the cape and in western Massachusetts.

Representative Harriet Stanley noted that how ownership units are counted is an issue of equity relative to how rental units are counted.

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CHAPTER 40B TASK FORCE  
DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Jane Wallis Gumble, Director of DHCD and Task Force Chair, asked Ms. Pelletier how big of a problem this really is, and how many of these units serve as second homes.

Ms. Pelletier responded that the problem is significant and that the people who live on the cape year-round can't afford to buy homes.

Marc Draisen, Executive Director of the Metropolitan Area Planning Council, noted that while he shared Ms. Pelletier's concern, the problem is regional in nature and there is no mechanism to ensure that the units serve as the owner's primary residence. He suggested requiring that the units built under 40B are year round units. He also noted that he had re-read the statute, and found that it only addresses affordable housing and does not discuss market rate housing. He explained that market rate rental units are already counted and it could be argued that this is inconsistent with the statute. He noted that he believed that doubling the count of market rate units would create further inconsistencies with the statute. He added that the impact of the different counting scenarios which had been distributed by DHCD last week showed that the impact of not counting ownership units towards the year round units is significant, and that he believed the impact of counting ownership units double would be even greater.

Michael Jaillet, of the Massachusetts Municipal Association, noted that he supported doubling the counting of homeownership units, since it provides communities with credit for increasing their density and absorbing the impact of denser housing. He added that the Task Force shouldn't be too concerned about people using these as second homes, because 40B developments increase the overall supply of housing.

Steve Dubuque, President of the Massachusetts Non-Profit Housing Association, noted that he did not think the Task Force had reached consensus on the issue of counting homeownership units. He added that he was in favor of the CHAPA proposal, and that he liked the idea of allowing communities to meet half of the 10% requirement with rental units and half with ownership units. He also noted that in terms of counting manufactured homes, he was not concerned about the material the unit is built with, but was concerned that the units provide decent & safe housing, are affordable, and have a deed restriction that ensures that once vacated it is rented to a low or moderate income household. He also noted that he had witnessed the problems with seasonal/second homes in the Cape that Ms. Pelletier had noted in the Berkshires. He added that he believed counting the market rate ownership units was going too far.

Representative Michael Coppola noted the need to give relief to communities while promoting affordable housing. He added that he thinks counting 100% of the ownership units makes sense, since 100% of the rental units are currently counted. He explained that the Task Force has heard that rental units are harder to permit, and while this is true for the regular permitting process, it is not true for the 40B process. He noted that since a community's zoning and density limitations are trampled under 40B, they should get credit for all the units built. He noted that if the Task Force wants to promote rental units, then it should do it in another way. He also noted that he was not particularly concerned

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

with the intent of the statute from 30 years ago, and that the Task Force needs to make 40B fit in today's environment, which means making it fair.

Jeff Rhuda, of the Homebuilders Association of Massachusetts, noted that the CHAPA proposal to cap homeownership at 5% of the 10% requirement would greatly restrict the creation of affordable housing in the outer-reaches of the Commonwealth because the demographics in those communities do not support rental development and rental developers would not try to build in those communities. He also noted that counting 100% of the homeownership units would artificially, and dishonestly lower the requirement from 10% to 2.5%.

Al Lima, Planning Director for the City of Marlborough noted that nobody had given him a reason as to why homeownership units are different from rental units. He noted that the only justification that he has heard is that counting them differently provides an incentive for communities to do rental development. He added that the task force had found that communities really have no control over the type of housing that is proposed under 40B in their community. He asked how the Task Force could explain to legislators and local officials that all ownership units do not count, but all rental units do count as an incentive for communities to do rental developments, when the communities have no control over the housing type. He noted that Marlborough has found that every four rental units generate one child, but every four ownership units generate seven children. He added that people want to own their own home.

Ms. Gumble asked how the Task Force could justify counting the market-rate units in homeownership 40B developments when they start at \$800,000.

Representative Michael Coppola responded that in most cases the people that move into the \$800,000 units are moving out of a lower cost home. He explained that the \$800,000 unit frees up the lower cost home the purchaser moved out of.

Mr. Lima noted that the market rate ownership units help subsidize the affordable units, which justifies counting them.

Mr. Draisen noted that there are extremely expensive market rate ownership units in 40B projects, and that the difference in market rate rental units and affordable rental units built under 40B is not nearly as great as the difference in ownership units. He noted that the main issue of fairness is meeting the regional need, and that Massachusetts is meeting this need very slowly.

Tom Gleason, Executive Director of MassHousing, noted that everyone knows that he thinks every unit should count because local zoning is overrun for every unit that is built under 40B. He added that he didn't think this task force would have done its job if the policy for counting homeownership units were not changed. He explained that while everyone has staked out how they stand, they now need to find the middle ground for a compromise and counting 50% is that middle ground.



## CHAPTER 40B TASK FORCE

## DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Ms. O'Donnell asked if the Task Force could reconsider Brookline's proposal since the Task Force had been informed that DHCD's analysis was incorrect.

Mr. Habib responded that DHCD's analysis correctly reflected Brookline's written submittal.

Ms. O'Donnell noted that there is a limit on the profit a developer can make on a 40B project, which places a cap on the price of the market-rate ownership units. She added that she agreed with Mr. Gleason that if the Task Force fails to reach a compromise on this counting issue, they would have failed.

Mr. Habib noted that the Task Force could return to Brookline's proposal on planned production later.

Ms. Pelletier noted the need to reach a compromise, and that she would rest her case on the vacation home issue to reach that compromise. She noted that there should be a requirement for income verification on manufactured homes if they are to count. She added that while she was not yet sure if she supported the CHAPA proposal or the proposal to count affordable ownership units double, the Task Force needs to come to some agreement on that today.

Howard Cohen, Board member of CHAPA, noted that as Mr. Rhuda had indicated counting all ownership units would mean that only 2.5% of the housing in a community would have to be affordable. He explained that while the importance of creating mixed income housing should not be dismissed; perhaps counting 100% of the ownership units is creating too much emphasis on mixed-income housing. He suggested finding something in the middle. He noted that Representative Harriett Stanley had presented data that showed that if a community that is currently at 0%, did only ownership development to satisfy the 10% requirement of 40B; the community would grow overall by 66%. He also noted that Saturday's article in the Boston Globe said that the Task Force is only making small changes, but that if units are counted in the way the Task Force has proposed, those 'small changes' would be like moving first base 40% closer to home plate.

Mr. Cohen expressed concern that counting manufactured homes would stop a significant amount of development. He cited a project in Danvers that wouldn't have been approved if mobile homes counted because the mobile homes would have brought them over 10%. He noted that he was worried that mobile home communities would be bullied by municipalities to report incomes, with the threat of the municipality imposing rent control. He added that he could support counting ownership units double.

Mark Bobrowski, Municipal Consultant and Professor, noted that Mr. Habib had disconnected the planned production component from the discussion of counting ownership units, and suggested that they be connected.

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

Mr. Habib responded that any change made to how units are counted would apply to planned production.

Mr. Draisen noted that it appeared that Mr. Bobrowski was suggesting applying these counting rules to a more limited subset of communities going forward only.

Mr. Bobrowski noted that this would encourage communities to plan.

Mr. Jaillet noted that counting changes should not apply to just future projects. He explained that applying counting changes going forward only, would inappropriately penalize communities that have already stepped up to the plate to create affordable housing. He added that he objected to the idea of linking the 50% count to approved plans because it would put the heat on local officials who would be put in the difficult position of including a particular project type in their plan so as to get it counted at 50%, even if it was not good planning.

Mr. Habib asked if the Task Force could propose, counting affordable ownership units double, as a compromise. He noted that Mr. Cohen had said CHAPA could support this.

Mr. Cohen responded that he would support the compromise, as long as mobile homes were not counted.

Mr. Habib noted that he wasn't sure if the Task Force would reach consensus on the question of counting manufactured housing, and suggested that the Task Force present the arguments to the Governor for consideration and that the Governor could make a decision on the issue. He asked if the Task Force took that approach, would they vote on the issue of counting homeownership units as a standalone issue.

Mr. Dubuque suggested that if all homeownership units are counted, then towns should have to provide multifamily zones.

Mr. Habib noted that Mr. Dubuque was going back to the 100% proposal, and that he was proposing counting 50% of homeownership units as a compromise.

Representative Michael Coppola requested that the record show that he strongly supported counting 100% of the homeownership units.

Mr. Habib asked Representative Michael Coppola, if in stating that he was more in favor of counting 100% of homeownership units, would it be accurate to assume that he would support counting 50% of homeownership units as moving towards 100%.

Representative Michael Coppola responded that doubling the counting of homeownership units was not enough for him if it didn't apply to existing units.

Mr. Habib explained that the doubling would apply to existing units, and asked if that would be acceptable.

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CHAPTER 40B TASK FORCE  
DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Representative Michael Coppola responded that he'd still like to see something "more toward" 100%.

Mr. Rhuda noted that he was on the Task Force on behalf of the Homebuilders Association, which represents approximately 80% of the rental production. He noted that the Homebuilders Association had discussed this, and they believed that the proposed compromise is the best solution due to the impact counting 100% of homeownership units would have on production. He added that the homeownership units that Mr. Coppola was talking about counting are generally three times as expensive as the affordable units, which is not the case in rental production.

Mr. Draisen noted that he could support the compromise if there was a limit on the counting of mobile homes. He noted that he was concerned whether the Governor's position on counting mobile homes would be the only point of difference on this report, and that they could rapidly come to the point where the report dissolves. He suggested taking a hand vote on this issue.

Mr. Habib noted that there was a proposal to conduct a hand vote, which was different from what the Task Force had done in the past. He added that the legislature would get a second chance at the recommendations of this report. There was support amongst Task Force members for conducting a hand vote on this issue.

Mr. Habib noted that the proposal was to count affordable ownership units (in the past and in the future) double capped at 100% of the units in the development. He asked Task Force members to vote on the proposal. Twenty Task Force members voted in favor, two Task Force members voted against, and one Task Force member abstained.

Representative Michael Coppola noted that applying the doubling policy to existing affordable ownership units is what swayed him to support the proposal.

Mr. Habib noted that there was consensus to support the proposed compromise, but not full consensus. He noted that the next issue was manufactured housing. He explained that the Task Force had just voted under the assumption that they could not reach consensus on manufactured housing and that their opinions would be stated on the record. He asked Task Force members how they wanted to proceed on Manufactured housing.

Manufactured Housing:

Bill McLaughlin, President, Rental Housing Association of the GBREB, asked what scenario for counting manufactured housing was under discussion.

Mr. Dubuque suggested that to be counted manufactured housing must be safe and sanitary, occupied by households earning less than 80% area median income, and have some form of a deed restriction.

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

Representative Harriett Stanley noted that the requirement of a deed restriction would be problematic. She explained that one of her constituents lives in a mobile home on \$5,000 a year, and had purchased the unit years ago with money from a divorce settlement. Representative Harriett Stanley explained that this woman subsists on this \$5,000 and public assistance and does not spend more than \$1 a meal. She added that \$5,000 a year is 50% of the federal poverty level. Representative Harriett Stanley noted that this constituent and her home are exactly what should be counted in the inventory.

Mr. Dubuque noted that he was fearful of counting manufactured homes that were in disrepair.

Representative Harriett Stanley, responded that stick constructed housing could also be in disrepair.

Mr. Dubuque responded that certainly these non-mobile units should also be decent, safe, and sanitary.

Mr. Draisen asked what the impact of counting manufactured homes under the different scenarios would be. He noted that this had been presented last week but that he didn't have the charts with him.

Mr. Habib responded that DHCD found that fourteen communities would go over 10% if manufactured homes were counted, and that most of those communities were rural.

Mr. Draisen asked how many of those communities were rural vs. suburban.

Mr. Habib noted that Merrimac and Salisbury were among the fourteen communities that would go over. He added that Salisbury was questionable as the units were likely to be seasonal.

Mr. Draisen noted that he was opposed to counting manufactured housing, but if they are counted it should be done in as limited a way as possible. He acknowledged that going back and deed-restricting existing units would be difficult, but asserted that it was necessary.

Representative Harriett Stanley noted that income verification is necessary.

Ms. O'Donnell asked if the group could reach consensus if there were conditions to; count just mobile homes and leave out manufactured housing, require income verification, and limit to year-round residents.

Mr. Dubuque suggested that if manufactured housing were to count, it should be counted in a manner consistent with the standard other units.

## CHAPTER 40B TASK FORCE

## DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Mr. Habib noted that the intention is to count mobile home parks, but the “PC” way to refer to them is manufactured housing. He explained that counting mobile home parks is what was on the table.

Representative Harriett Stanley asked if the proposal required just income verification and year round occupancy.

Mr. Habib responded that Representative Harriett Stanley was correct.

Mr. McLaughlin asked if the income verification would occur annually.

Mr. Habib noted that via the CDBG program DHCD must income verify, and asked Karen Bresnahan how DHCD verifies incomes for CDBG rental units.

Ms. Bresnahan, Community Representative for DHCD, responded that cities and towns are responsible for income verification.

Ms. Pelletier suggested that if the tenancy changes then the town should have to re-certify income eligibility, but that if the same person is in the unit then the unit should still count.

Mr. Cohen noted that the Housing Appeals Committee (HAC) had just issued a decision that found that if a town issues a comprehensive permit that brings them over 10% then they could deny anything else that has been proposed. He asked if an application is filed with a town and the town then immediately scrambles to income – verify the occupants of their mobile homes, if the town could deny the project.

Mr. Habib asked Don Martin how many communities had mobile homes.

Mr. Martin, Legislative Liaison for DHCD noted that there are 321 communities with at least one mobile home.

Mr. Cohen noted that the Task Force is trying to respond to the legitimate concerns of communities and that he believes they had already done that with some of the other proposals. He noted that he was worried that in counting manufactured housing, the Task Force would be stopping a great deal of production in communities that have built no additional housing.

Mr. Draisen noted that he believed that applications in the pipeline should be held harmless on this issue. He added that the Task Force was already making substantial changes to 40B, and that this change involved a great deal of uncertainty.

Ms. Gumble noted that this is an issue that reasonable people would disagree on, and suggested establishing a Task Force to explore the issue further. She noted that there is a Manufactured Housing Commission that could provide valuable feedback. She added that a number of communities have raised this issue, and that she has always personally

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

felt that these units provide affordable housing and should count. She also noted that she didn't think that it is very often that the mobile homes are moved. She suggested taking the manufactured housing issue out of the equation until they could work with the Manufactured Housing Commission to put together some better information.

Representative Kevin Honan suggested noting people's stances on this issue in the report and that the issue will be studied further.

Mr. Habib asked if there was consensus to recommend further study by the HUD committee. Task Force members supported making this recommendation.

Senator Dianne Wilkerson noted that she had abstained on the vote that they took on the counting of homeownership units, and was concerned because that was the only vote that they took. She explained that she was concerned that by voting on this single issue, the Task Force was sending the message that this was the only issue important enough for a vote. She didn't think this was the right message. She added that she had abstained because she was considering every proposal in light of the other proposals in a comprehensive way. She added that she thought that it may be a mistake that they are now on record having taken a vote, and that there was only one issue important enough to vote on. She noted that housing situation is worse now than it was years ago, and that the Task Force is trying to find ways to incentivize production, not hinder it. She also noted that she was in the Task Force to represent the people who are looking for affordable housing and to ensure that as they are looking for affordable housing they will be able to find it.

Housing Regions:

Mr. Habib noted that there were two separate proposals on housing regions, and asked who would like to start the discussion.

Mr. Draisen noted that he was pleased that the housing region proposals have been split into two separate proposals. He then noted that he would like to suggest a few clarifications on the second proposal that would incorporate the concerns of other task force members, particularly Senator Wilkerson's suggestion to require communities to provide multifamily zoning.

Ms. O'Donnell asked Mr. Draisen to identify which recommendation he was referring to.

Mr. Draisen responded that he was referring to the second proposal, and that he was suggesting the addition of a bullet point for the inclusion of a requirement for multifamily zoning. He noted the need to add a bullet point stating that DHCD would not count any unit more than once and the need to clarify that infrastructure costs could also mean infrastructure services. He suggested clarifying that the regional plan goals for affordable housing production, be no less than the total number of units each community in the region would need to create individually in order to reach 10%. He also suggested providing Regional Planning Agencies (RPAs) the opportunity to comment on the plans.

## CHAPTER 40B TASK FORCE

## DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Jack Clarke, Director of Advocacy for the Massachusetts Audubon Society, asked Mr. Draisen why this recommendation, and not all recommendations, should include a requirement for existing multifamily zoning.

Mr. Draisen responded that since this recommendation would only be used going forward on an ad hoc basis, it was not appropriate to apply the multifamily zoning requirement to the other recommendations/communities that had shown initiative.

Representative Harriett Stanley asked if the cap on communities that had reached 10% should be removed.

Clark Ziegler, Executive Director of Massachusetts Housing Partnership, responded that he was concerned that the Task Force had a lot of agreement on the first proposal, but the second proposal could detract from some of the very good recommendations in the report. He added that he was concerned that it sends the message that rich towns can get out of doing affordable housing. He suggested that removing the second regional planning proposal would strengthen the rest of the report.

Mr. Dubuque noted that he did not like the idea of communities buying credits from other communities. He added that as much as the Task Force has heard complaints from suburban communities, they have also heard complaints from urban communities who don't want more affordable housing.

Senator Dianne Wilkerson agreed with Mr. Dubuque, and noted that she believed that it was inevitable that the legislature would address the idea of regionalism, and asked the Task Force to give it further consideration. She explained that the Task Force has already spent more time evaluating and analyzing the idea than the legislature would, and as such, the Task Force is the best group to make a recommendation. She added that she believed the Task Force should leave the proposal in the report.

Mr. Lima noted that the proposal appears to be another gimmick for wealthy communities to get out of affordable housing.

Mr. Gleason noted that he thought the Task Force should go for it. He explained that he was not troubled by the idea of rich communities getting out of this. He added that if a community that is already at 10% could cut a deal to get reimbursed by another community for some of the costs of a development that they were going to do anyway, then that would be great. He noted that he believed that DHCD should be the final arbitrator of the Task Force's recommendations, and that he agreed with Senator Wilkerson, that they should try to put a rope around this, and provide DHCD with a way to say no.

Mr. Bobrowski noted that he had had a conversation with some New Jersey officials after last week's meeting, and that he had learned that; 1) NJ does not require the 50% in-town requirement to be built prior to any inter-municipal trading, and 2) NJ has identified and planned the regions at the state level, which would not be possible in Massachusetts due

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

to home rule. He also noted that communities that are already at 10% should be allowed to participate in this since those communities are likely the core of the economy in surrounding communities.

Mr. Jaillet noted that he was in favor of doing something on this since the statute talks about regional need, and this proposal talks about building regionally. He added that he was not in favor of creating regional boundaries, and that he was in favor of the idea of contiguous communities and of trying this as a pilot program.

Mr. McLaughlin noted that he supported this proposal and that the requirement for DHCD approval made him more comfortable with the recommendation. He added that he agreed with Mr. Bobrowski that communities at 10% should not be prevented from participating.

Mr. Cohen noted that the Task Force report should speak to this issue since it was certain that it would be discussed at the legislature. He noted that allowing communities over 10% to participate would send the wrong message of communities being able to buy their way out of affordable housing.

Ms. O'Donnell suggested providing DHCD with the ability to issue a waiver of the 10% limit so that smart growth projects wouldn't be stopped.

Mr. Cohen responded that a waiver provision would put the Director of DHCD in a very awkward position.

Ms. O'Donnell noted that if the project were in compliance with everything else the Task Force had discussed, it would be a shame to lose the project because one community is over 10%.

Mr. Draisen noted that there are many possibilities under this proposal, and that he thought that the Task Force had developed a carefully circumscribed test of the idea.

Mr. Heart suggested that perhaps the minimum in-town requirement could be higher, in order to address the problem of misperception. He noted that an in-town requirement of 7.5% might be more appropriate than 5%. He added that he did not support precluding towns that are at 10%. He also noted that DHCD approval is key, and that he believed that this should be pursuant to a plan.

Mr. Habib noted that the written language in the draft report includes everything that has been said. He noted that the pilot is written without specifying a cap on the number of deals. He added that he was hearing consensus to move this forward.

Ms. Pelletier noted that it would incorporate Mr. Draisen's suggestions.

Jack Clarke, of the Massachusetts Audubon Society asked if the cap on communities at 10% would be removed.



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CHAPTER 40B TASK FORCE  
DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Mr. McLaughlin noted that he thought the cap on communities at 10% should remain for the pilot.

Senator Dianne Wilkerson suggested that the 10% cap should stay, since the purpose and the goal of the proposal was to provide options for communities that are not at 10%. She also noted the need to be clear about what was meant by contiguous. She suggested that a group of contiguous communities would be needed to form a region, and that to be able to participate in this the communities need to be contiguous to each other.

Mr. Clarke responded that it wasn't his intention that the communities be contiguous, because it takes away from the concept of the region working together.

Senator Dianne Wilkerson noted that there would be two groups; 1) The group of communities that make up the region, and 2) the communities that can participate in the inter-municipal agreement. She added that this is the scenario that the Task Force had previously discussed.

Mr. Draisen noted that the two proposals included two different types of relationships. He explained that the first proposal is specifically related to ad hoc projects and he would expect that those would universally be contiguous communities where the project is on the border or crosses the border. He added that the second proposal is more liberal; it would be for a group of communities that form a region. He noted that the communities in the region would not all touch, but together they would. He noted that the communities in this region would have to come together to create a plan so that the goals for the group would be no less than the goals would be for them individually.

Mr. McLaughlin asked if it would be correct to interpret the proposal to mean that if there were 5 communities in a region, and they create 500 homes, then each community would receive equal credit in the Subsidized Housing Inventory.

Mr. Draisen responded that the plan that the region would present to DHCD would include how the credit would be distributed.

Mr. Jaillet noted that he would support this as long as there was a shared border between all the communities in the region.

Ms. Pelletier noted that requiring a shared border would prevent the communities in the cape from participating in this because most of them don't touch each other because of the Cape's linear geography. She added that communities in the cape do many things as a region, and that she would not want to see them stopped from doing this because they may not share a border.

Senator Dianne Wilkerson noted that she would not support this proposal if the communities are not contiguous.

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

Mr. Habib noted that he was not hearing consensus on this, and that unfortunately they may have to drop it. He noted that it could be prominently discussed in the section for issues that did not have consensus, and suggested noting in the report that the group feels that this should be done on a pilot basis.

Mr. Clarke noted that the Task Force needs to be bold, and suggested trying out a pilot and letting DHCD make a determination on the pilot.

Mr. Jaillet noted that when you look at it from the pilot point of view it unfortunately doesn't apply to the cape. He also noted that the Task Force has put a lot of other limitations on this proposal that would limit other communities from participating. He noted the need to go forward on this, and added that without regional ability, growth would be limited.

Mr. Habib asked if the group wanted to address Senator Dianne Wilkerson's concerns that the communities must be contiguous to do this.

Mr. Cohen noted that he thought that there was consensus that this should go forward with the limitation that the communities must be contiguous, with the idea that it could be expanded in the future to include non-contiguous communities in a region.

Senator Dianne Wilkerson noted that her concern was that when the Task Force had discussed this at previous meetings it was under the requirement that the communities be contiguous, and that she was raising this as a point. She added that as long as the communities are required to have the zoning to do multifamily housing, then they would avoid the perception that communities are buying their way out.

Mr. Heart noted the amount of work and discussion that had gone into this proposal and the idea of supporting it in a pilot form. He also noted that it would promote smart growth and urged that the pilot proposal be tied to a multi-family zoning requirement.

Mr. Habib noted that there had been consensus on the first proposal. He then asked if anyone was opposed to recommending the second proposal as a pilot with the requirement of multifamily zoning. No Task Force members were opposed and Mr. Habib noted that consensus had been reached.

Issues Outside of 40B:

Mr. Clarke noted that after reviewing the report he could support all the proposals and recommendations, but he took issue with some of the findings.

Mr. Habib asked Mr. Clarke to please hold his comments on the findings of the report until the Task Force got through the topic of issues outside of 40B starting with those identified in the appendix to the report.

## CHAPTER 40B TASK FORCE

## DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Mr. Clarke noted that he supported recommending the creation of a Task Force to evaluate 40A and 41, but that the language describing the findings on wetlands bylaws would prevent him from supporting the recommendation.

Mr. Draisen noted that he thought that the land use section was an excellent description of the problem, but it didn't include any findings.

Anne Marie Gaertner, Senior Policy Advisor for DHCD, responded that the section was intended to provide an observation of the situation and was not intended to include any findings.

There was some confusion as to which part of the report included the recommendation for the Task Force on 40A and 41. Mr. Habib noted that he had thought that the report itself had included the recommendation for the Task force on 40A and 41, which is what the group had previously discussed. He noted that the recommendation for the Task Force on 40A and 41 had in fact not been included in the main report by mistake, and that DHCD would incorporate the recommendation into main report.

Mr. Rhuda noted that the language in the findings was very specific, and did not suggest altering the state wetlands act in any way. He explained that the findings said that municipalities should only pass local zoning in excess of State Wetlands Act based scientific evidence.

Mr. Heart noted that the Task Force had not heard any evidence on why towns pass bylaws in excess of state requirements.

Mr. Habib suggested removing the finding since the issue had not been fully discussed by the Task Force.

Mr. Cohen suggested removing the language that described why communities pass bylaws in excess of the State Wetlands Act.

Mr. Habib asked if it was important enough to include the language if it causes so much concern.

Ms. O'Donnell noted that the report was very good, and that including this general language at the end would not serve any purpose.

Mr. Habib noted that this section would be removed from the report.

Mr. Habib asked if anyone would like to suggest additional recommendations for the 'Outside of 40B' section.

Ms. Pelletier noted that the Task Force had reached a great deal of consensus for their recommendations, and that the changes make sense. She added that it was unfortunate

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

that there is no current funding stream that allows CDCs and non-profit developers to develop affordable housing. She suggested recommending a new funding stream for this.

Mr. Draisen agreed with Ms. Pelletier and suggested expanding the recommendation to include the restoration of the Trust Fund. He explained that the past three months have been disheartening with the loss of the Trust Fund, and the uncertainty of an increase in bond cap. He suggested including a statement in the report noting the need to address these issues and restore the funds. He added that while the recommendations of the Task Force may cut production a little bit here and a little bit there, the lack of funding of these programs would cut production significantly.

Mr. Habib noted that the report would be amended to include a statement on the need to provide funding for affordable housing.

Representative Kevin Honan noted the need to get the word out on the hard work and compromises that the task force has made.

Mr. Dubuque recalled that Senator Chandler had commented early in the process that many of the 40B projects have very little affordability, and noted that the Task Force hasn't addressed that issue.

Ms. Gumble noted that DHCD's budget has been cut by the legislature, but that only 16% of DHCD's budget is state funded and the rest is federally funded. She explained that since the DHCD's federal funding has been stable, cuts in state funding have not been as detrimental at DHCD as they have been at other agencies.

Mr. Habib asked if there were any additional suggestions on the 'outside of 40B' topic.

Mr. Jaillet noted that there is a provision that if a community has a rental project that is refinanced the units will go off the subsidized housing inventory unless MassHousing refinances the project. He added that his town refinanced a project with MassHousing, but since only 20% of the units remained affordable (as opposed to 25%) the town is in danger of not being able to count 100% of the units. He explained that MassHousing doesn't have the funds to put more financing into the projects to get greater affordability. He then noted that the communities should not be penalized for the lack of financing at MassHousing and suggested that communities be able to count 100% of the units.

Mr. Habib responded that he thought this was legitimate issue for DHCD to consider, and asked Task Force members if they wanted to include it in the report. There was general agreement to include it in the report.

Mr. Jaillet noted that it is very difficult to find income - eligible households five years after these 40B projects are built.

Mr. Draisen asked if the income of the eligible purchaser is limited but the actual purchase price was not.

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CHAPTER 40B TASK FORCE  
DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Mr. Gleason noted Mr. Jaillet had described an old problem that had recently resurfaced. He added that he thought the problem had been addressed by recent NEF guidelines issued by DHCD, which remove the concept of relative affordability.

Mr. Habib noted that DHCD has started to work with regional non-profits to identify eligible buyers.

Mr. Gleason noted that the concept of relative affordability in Westwood results in purchase prices that are out of reach for income eligible households.

Mr. Dubuque suggested that in cases where the price of the house could not be limited, you need to think about ways to help people buy it.

Mr. Lima suggested that the Task Force come out in favor of inclusionary zoning.

Mr. Habib asked if there was consensus to include a statement supporting inclusionary zoning.

Mr. Rhuda responded that he would only support a statement for inclusionary zoning if it included a density bonus.

Mr. Habib noted that it was unlikely that consensus would be reached on this suggestion after any amount of discussion.

The Report:

Mr. Habib asked if anyone had suggestions for changes to the report.

Mr. Clarke suggested removing the findings on pages 14 through 17 on land use impacts.

Mr. Habib asked Mr. Clarke to explain why he would like the findings removed.

Mr. Clarke responded that the sentence at the end of the second paragraph on page 15 that reads "All of these factors may act alone or in concert to impede development or place limitations on what can be built" unfairly portrays the intent of local bylaws in a negative light. He explained all the factors identified in that paragraph are intended to protect the public safety.

Mr. Habib suggested changing the language to state that the intent of the bylaws is to protect, but that they can impede development.

Mr., Draisen noted that he thought that the section was reasonable, factual, and nicely sets- up the discussion for the Task Force on 40A and 41.

Mr. Clarke responded that the change proposed by Mr. Habib addressed his concerns.

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

Mr. McLaughlin noted that pages 18-19 of the report included a discussion of limiting the number of applications that a ZBA has to review at one time. He explained that he was concerned that this would stop good projects proposed by municipalities and non-profits from going forward. He then suggested that non-profits and municipalities be exempt from the project limit. He also suggested changing to the definition of 'recent application' from one that was filed within the previous 9 months to one that was filed within the previous 9 months or has closed within the previous 9 months, whichever is sooner. He also suggested establishing a minimum number of aggregate units in those three projects.

Mr. Habib noted that Mr. McLaughlin's suggestion to include 'or closed' in the definition of recent applications would be incorporated into the report.

Representative Harriett Stanley noted that she thought the language limit the number of permits, not the number of units.

Mr. McLaughlin noted that many communities have enough staffing to easily handle three applications.

Mr. Cohen suggested that the number of units should be matched to the obligation of the community.

Ms. O'Donnell suggested that they had reduced the number for the planned production from .75% to .5%, then it might not be necessary to limit the number of projects, and suggested establishing a limit to pending applications equal to .5%.

Mr. Habib suggested establishing a limit of three projects with units equal to .5%.

Ms. Gaertner noted that the proposals of the Task Force had been envisioned as ways to create options for communities with planned production and by providing communities with time to absorb the impact of large projects. She explained that this proposal was intended for communities that are suddenly hit with a number of applications and are strained by dealing with those applications.

Mr. Draisen suggested that the Task Force could reach an agreement on the number of units, since they were not talking about the modest scale proposals when they had discussed this previously. He suggested that if a project has fewer than a set number of units, then it shouldn't count toward the three project maximum.

Mr. Habib asked if 10 units would be a reasonable minimum.

Representative Harriett Stanley noted that the Task Force had already discussed this idea.

Mr. Draisen noted that this was the only issue that was drafted in a way that differed from his recollection of the discussion. He added that he was surprised to read that it would provide grounds for denial of an application, and that he had thought it would mean that an application would simply have to wait in cue to be reviewed.

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CHAPTER 40B TASK FORCE  
DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Ms. O'Donnell noted that any denial would have to be a denial without prejudice, and the applicant could re-submit once the situation has changed.

Mr. Habib asked if Task Force members wanted to tie this proposal to planned production or to a minimum number of units.

Mr. Ziegler noted that he thought that it should apply to a minimum number of units.

Ms. Pelletier suggested that the minimum units be a percentage of housing stock rather than a hard number.

Mr. Jaillet suggested that the limit be five projects.

Mr. Cohen suggested that it would make sense to apply the 2% progress to this, so that a community doesn't have to review proposals with units that exceed 2% of their housing stock at one time.

Mr. Habib suggested establishing the following two sets of measures; 1) If a community goes through planned production route they can have a limit of 3 applications that total .5% of their housing stock, 2) if the community doesn't have a plan then the limit is 2% of their housing stock. He added that this would encourage planning.

Mr. Gleason noted that this provides a check and balance that didn't exist before, and that it makes sense to tie multiple things together.

Mr. Cohen noted that he was concerned that the idea described on page 5 and 6 of the report for a public hearing prior to the issuance of a project eligibility letter would eliminate the distinction between the project eligibility process and the public hearing process.

Mr. Habib responded that the intention was that it would be an informal public meeting to discuss the project.

Mr. Cohen noted that he didn't think the Task Force should mandate a public hearing at this point in the process.

Mr. Dubuque noted that he didn't think there should be a formal public hearing as a requirement. He suggested that the subsidizing agency ask the developer if they have discussed with the project with local boards.

Mr. Habib noted that the Task Force had already discussed this and come to consensus on it. He explained that the intent was that it would be a public meeting with an informal discussion, and noted that DHCD would soften the language to better reflect this intention.

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

Mr. Rhuda noted that since the language required that the town schedule a meeting within 20 days, the project eligibility letter process could be held up for months. He suggested that the meeting be held within 30 days.

Mr. Dubuque suggested that the developer discuss his proposal during a regularly scheduled meeting of the selectmen.

Mr. Jaillet noted that the proposal was supposed to be a relatively small meeting with community staff, and noted that including the general public at this point would cause major problems. He noted that this should be an opportunity for the local staff and developers to discuss the proposal and how they could make it work. He explained that including the public at this point would hinder these discussions since it would result in the developer and local staff trying to play to the public.

Mr. Clarke asked why the public should be kept out.

Mr. Jaillet suggested that this initial presentation should be made during a staff meeting.

Representative Harriett Stanley noted that this was discussed early on and had been closed, and that it seems that the Task Force is re-opening it. She then asked why people were afraid of including the public.

Mr. Dubuque noted that South Shore Housing usually does an informal presentation to local staff at their meetings, and then invites the abutters to a separate meeting. He explained that requiring the chief elected official to convene the meeting would change the nature of the discussion.

Mr. Rhuda noted that he thought that it would take a maximum of 60 days before the agency issued the project eligibility letter.

Mr. Habib responded that the Task Force had agreed to 60 days.

Mr. Cohen noted that he didn't recall that they had agreed to make this a public meeting. He added that he thought that you need to bring in the public at the appropriate time, and this meeting would not be the appropriate time. He added that he thought that the developer should meet with the planning staff or any committee the selectman assigns, to work through the proposal.

Ms. O'Donnell suggested changing the language to remove the public advertisement component of the recommendation. She also suggested changing the language so that the applicant had to demonstrate that they attempted to get local input on the proposal.

Mr. Bobrowski noted that by the time a developer gets to the ZBA it is too late for input from the local boards, and suggested that it should be the choice of the municipality to convene a meeting with the developer.



## CHAPTER 40B TASK FORCE

## DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Mr. Habib noted that if the municipality doesn't schedule a meeting, then the information on the project wouldn't be distributed.

Mr. Bobrowski noted that he had recently assisted the Town of Sterling with their first 40B project eligibility letter. He noted that all the local boards had submitted comments to MassHousing. He suggested that the chief elected body have the option of scheduling a meeting within 60 days.

Mr. Habib asked who should be invited to the meeting.

Mr. Bobrowski suggested that the meeting be posted as a public meeting but not advertised in the papers.

Mr. Jaillet noted that he didn't think the meeting should be posted. He explained that in his town, he would need to get a good idea of what the project was about and whether it was consistent with the town's goals. He added that he would want the town staff in the room to discuss the project, and that there is no need to make it a public meeting.

Ms. O'Donnell noted that they were trying to get a codification of the project before it goes to the ZBA. She explained that this was intended for the towns that don't have professional staff, to help their local boards comment on the project before the ZBA issues the decision.

Mr. Jaillet noted that he would support the recommendation as long as the meeting was not required, but allowed at local option.

Mr. Habib noted that there was consensus to make the meeting at the community's option.

Mr. Heart suggested changing the project eligibility letter language on smart growth criteria from 'may' to 'shall'.

Mr. Gleason noted that MassHousing would be fine with that change.

Mr. Habib noted that there was consensus to change may to shall.

Mr. Heart suggested inserting 'pursuant to its affordable housing plan' on page 30 Section 7 B.

Mr. Habib noted that this was a reasonable correction and that DHCD would incorporate it.

Representative Michael Coppola noted that he found the second full paragraph on page 12 problematic. He noted that the Task Force had never received testimony that found that initial negative perceptions of 40B projects faded away once the projects were built. He added that he didn't recall hearing any testimony on that.

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CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MAY 27, 2003 MEETING

Mr. Habib responded that there had actually been quite a bit of testimony on that issue.

Mr. Rhuda noted that a number of emails that had been sent to Mr. Lima and distributed at the last meeting had supported the finding.

Representative Michael Coppola asked how the Task Force could say that they haven't heard that 40B has not been a primary source of local educational budget problems.

Mr. Jaillet responded that it was easy to make that statement since 40B projects are not the problem with municipal budgets.

Mr. Habib noted that the findings are tied to the impact of 40B and that the Task Force has spent many meetings discussing the impacts. He added that the last sentence in the paragraph addressed what had been brought up on many occasions, and was supported by Mr. Jaillet of behalf of the MMA. He noted that further down the language admits that the major problem with 40B is the process.

Representative Michael Coppola asked if the report had to say that the new student impact isn't as big as it has been made out to be.

Mr. Habib noted that Mr. Jaillet had made that statement on behalf of the MMA.

Mr. Jaillet noted the need to be honest on this issue.

Mr. Habib noted that in fairness the Task Force had been presented with data on this issue. He added that Mr. Jaillet was representing himself as well as the MMA, and that this is what the MMA was saying. He also noted that the data that had been presented shows how the local school aid formula means the impacts of development can vary by community and that the report includes a recommendation to speak to that issue.

Representative Michael Coppola noted that he found it offensive that the report states that communities are engaging in reactive processes, when they are trying to be proactive. He asked why the use of zoning is interpreted as a lack of planning.

Mr. Habib suggested changing the language to say that the use of zoning could be proactive or reactive to address Representative Michael Coppola's concerns.

Representative Michael Coppola responded that Mr. Habib's suggestion would address his concerns.

Mr. Heart noted that when the measures discussed on page 12 are used just to slow growth without planning it is reactive.

## CHAPTER 40B TASK FORCE

## DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Mr. Habib noted that DHCD looked at this issue considerably, to make sure the statements are fair to communities. He added that DHCD would review the language again, and make changes to make sure it is fair to communities.

Mr. Dubuque suggested that the report state that in the absence of other tools, this is what communities reasonably do.

Mr. Bobrowski asked if the Task Force could discuss the Brookline proposal since it didn't get a 'fair shake' at the last meeting.

Mr. Habib noted that the intent of Brookline's proposal was to establish the affordable housing deficit at one point in time, and then the community has to close 5% of that gap each year going forward.

Mr. Draisen noted that it was now his understanding that the number of units that would need to be produced would not be reduced over time and that it would take a maximum of twenty years to get to 10%, and asked if this was correct.

Roger Blood, of the Brookline Affordable Housing Advisory Board, noted that Mr. Draisen was correct. He explained that the problem last week was caused by the presentation of an analysis that was based on an interpretation that the housing deficit in Brookline's proposal would change over time. He noted that Brookline's proposal was to establish the housing deficit and the number of units needed to close the gap by 10% at one point in time.

Mr. Bobrowski noted that he was concerned about the number of units needed to be built under this proposal compared with the requirements of the existing and proposed planned production.

Mr. Draisen asked how Mr. Blood would determine what would be reasonable for larger communities.

Mr. Blood responded that .5% was Brookline's proposal.

Mr. Draisen asked how many units .5% is in Brookline

Mr. Blood responded that it would be 30 units per year.

Donna Kalicov, of the Town of Brookline, suggested that since the proposal is new, the report could include a sentence that kept this idea as an option, with the specifics to be fine-tuned later.

Mr. Habib noted that this is an issue in the larger communities.

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

Mr. Draisen noted that it would seem that in a community that has a small gap, this would be a relatively small number. He asked how the Task Force could give communities a break, without giving towns too much time to get to 10%.

Mr. McLaughlin noted that if you apply this proposal to towns that are already at 5%, it would give them 10 years to get to 10%.

Mr. Ziegler noted that he was not comfortable with this proposal, since they would be taking the bar they had just reduced even lower.

Mr. Rhuda noted that if the Task Force goes forward with this, then everyone would be allowed 20 years to get to 10%.

Mr. Blood noted that the proposal recognizes communities that have already done affordable housing, and provides them with a reasonable incentive for them to plan and build. He added that the exact number is not the issue, and that he just wanted to keep this on the table.

Mr. Draisen noted that many Task Force members feel that they have already gone very far with the .5% planned production adjustment, and suggested that DHCD could consider this as the planned production program is implemented further down the road.

Mr. Blood responded that he would be satisfied if the door was left open for the idea to be reviewed later.

Ms. Gaertner noted that the regulations already provide an option for ideas similar to Brookline's proposal. She explained the HAC regulations state that the HAC will consider communities that have a plan for affordable housing production and are working towards implementing the plan. She noted that this might be the way to utilize Brookline's proposal

Mr. Ziegler suggested creating a set of best practices and legal guidance for communities.

Mr. Draisen suggested that RPAs should be able to comment on things throughout the report. He then asked if the local aid piece was referring to new money or to the redistribution of existing money, and whether it would apply to 40B only.

Mr. Habib responded that the local aide piece was referring to new money for low-income housing.

Mr. Draisen suggested clarifying the language. He then asked if the piece on density bonuses should be for rental and not homeownership.

Mr. Habib responded that the Task Force is proposing density guidelines for homeownership developments.

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CHAPTER 40B TASK FORCE  
DRAFT MINUTES OF THE MAY 27, 2003 MEETING

Housekeeping:

Mr. Habib asked Task Force members to send in their biographical information if they have not yet sent it in. He also noted that the announcement of the report would be on Thursday June 5<sup>th</sup>, in Boston but the time had yet to be established.

Mr. Habib explained that DHCD would wait for these changes to be discussed at the legislature before taking action, with the exception of a couple of areas that can be achieved easily via changes to the regulatory process.

Final Comments:

Mr. Habib thanked everyone who had participated, and noted that they should all be commended on how they worked together over the past three months. He also thanked Ms. Gaertner who wrote the report, and noted the tremendous amount of effort she put into it. He then thanked Kristen Olsen who had written all the meeting minutes. He also thanked Sarah B. Young, Bill Reyelt, and Marilyn Contreas who were all greatly involved in making the report come together. He also thanked Helen Stevens and Angel Serrano for their help in setting up the room and ensuring that everyone received copies of the materials. He then thanked the Information Services staff for their work in creating the Task Force website.

Mr. Habib noted that he thought that the difference this year and last year with 40B is that this year the legislature really has a choice. He explained that a lot of topics had not been thoughtfully discussed prior to this Task Force, and that he thought the Task Force had proved that you could balance the needs of communities and the need for affordable housing. He added that the fact that the report admits that the HAC needs change, shows that the Task Force means business. He noted that he thought that all the changes that had already been made to 40B are responsive to the concerns brought forward by cities and towns, and that all the changes in this report respond to community concerns.

Mr. Habib noted that legislators would be able to say that if they vote to support this package, they would be voting for significant change. He added that unfortunately there are some legislators who don't want to change or improve 40B, and only want to eliminate 40B. He suggested that when a legislator stands up and says they don't support these changes and want 40B eliminated, you should ask them how housing would get built in their community without 40B. He concluded by saying that he believes that the Task Force is recommending comprehensive changes, and that he was proud of the group.

Mr. Draisen noted that he hoped that everyone would stand by the report. He noted that he personally doesn't support some of the recommendations, but that he would stick by them and hoped that everyone else would do the same. He then thanked Mr. Habib for all his hard work in facilitating the Task Force.

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MAY 27, 2003 MEETING

Ms. Gumble noted that she thought the report was a terrific document, and that they just need to sell it. She thanked everyone who had participated, and noted that she had never seen such great attendance. She added that there had been a remarkable tenor in the way people worked together. She concluded by saying that this is the way government should work.

Representative Harriett Stanley noted that this was one talented group of intellectual and passionate people.

-----Original Message-----

**From:** Gwen Pelletier [mailto:gwen@lowercape.org]

**Sent:** Thursday, May 22, 2003 7:34 PM

**To:** Habib, Fred (OCD); Gaertner, Anne Marie (OCD)

**Cc:** Joe Kriesberg; aarong@chapa.org; sdubuque@southshorehousing.org; Draisen, Marc; Cohen, Howard; Ziegler, Clark; mgondek@cedac.org; Roger Herzog

**Subject:** 40 B; homeownership count & "outside 40 B"

Fred and Anne Marie,

Two items: homeownership count; new issue for "outside of 40B"

### **RE Counting homeownership units:**

I have a major concern around counting homeownership units beyond the those, normally 25%, that are restricted to affordable first time buyers. However, I recognize the "political advantage" to responding to the desire to count homeownership at higher than the 25% restricted units. I understand the issue relative to zoning relief for all of the units. However, there are two significant points that must be considered:

- In a vacation area, such as Cape Cod and communities in other parts of the state on the shore and in the mountains, the non restricted units can be sold as second homes. AND THEY OFTEN ARE on the Cape. Therefore, those new homes do NOTHING to add to the housing stock. They may add buildings, but do not increase the available housing for folks who live and work in vacation areas. Therefore, any language changing how homeownership units are counted must be certain that it addresses **YEAR-ROUND** homeownership units.
- The critical need is for rental housing. Therefore, I think it dangerous to count 100% of the homeownership units. There needs to be an incentive for rental housing construction. Without an incentive, the focus may very likely be on homeownership, cutting out the opportunity to affordable year-round housing for those folks who need it the most, the working poor and the very low income who will likely never be in a position to buy a home.

### **Outside 40B issue --a new one**

Even with the proposed changes in 40b, communities are going to have real challenges increasing the stock of affordable housing. Non-profit community based housing developers already contribute in important ways to help increase available affordable housing. Communities need all the help they can get. With the current proposed cuts to housing programs, the non-profit housing developers will find it more and more difficult to address the needs of their communities. Their capacity to develop affordable housing needs to be supported, not limited. To that end, MACDC proposes that the 40B Task Force also recommend capacity development for CHDOs. Attached is a proposal. Please add this to the list of "issues outside 40B" for the Tuesday, May 27 discussion. Thank you.

## APPENDIX I

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**Proposal: Community Housing Development Program**

**Recommendation:** The state shall establish a Community Housing Development Program to be administered by CEDAC that will provide grants to Community Housing Development Organizations (CHDOs) as defined by the United States Department of Housing and Urban Development and certified by appropriate local or state agencies. The purpose of these grants will be to build the capacity of CHDOs to develop and preserve affordable housing. The funds would be used for early stage predevelopment work such as site identification, community outreach, community planning, etc. These are activities that are too early in the process to be appropriate for CEDAC predevelopment loans. The funds could also be used by CHDOs to build their long-term development capacity.

**Rationale:** The 40B Task Force has identified sticks and incentives to encourage housing production. It has suggested increased resources for communities to use to review proposals. However, communities need tools to build housing; community based, non-profit housing organizations (Community Housing Development Organizations, CHDOs) are an important tool. CHDOs are much more likely to initiate “friendly 40B” projects. As local, non-profit, mission driven, organizations, CHDOs are dedicated to building quality affordable housing that is responsive to local needs and concerns. CHDOs give communities the ability to respond to private sector proposals, and also to initiate community led proposals that offer truly win-win outcomes. The fees and profits generated by such deals are recycled into future housing development. The federal HOME program allows local jurisdictions to use 5% of their HOME allocations for operating grants to CHDOs. CEDAC is the right agency to administer this program because their primary mission is to work with non-profit developers to build affordable housing. They also offer predevelopment loans and can ensure that this grant program is complimentary to that loan program.

**Funding:** The state should establish a dedicated revenue stream(s) to fund this program. These funds could come from real estate related fees. The program should be funded at about \$2 million per year.

## **Response from MassPlanners List to Email from Al Lima**

From: Al Lima [mailto:[alima@ci.marlborough.ma.us](mailto:alima@ci.marlborough.ma.us)]  
Sent: Tuesday, May 20, 2003 8:37 PM  
To: [massplanners@cs.umb.edu](mailto:massplanners@cs.umb.edu)  
Subject: [massplanners] Chapter 40B ownership units

Hello again planners,

Thanks to all of you who replied to my questions related to the impact of 40B on your communities.

As you probably know, 100% of 40B rental units are counted towards a community's 10% target, whereas only 25% of the ownership units (the actual affordable units) are counted. Some members of the legislature and others have requested that this disparity be corrected and that 100% of the ownership units also be counted.

This has become a contentious issue among the Governor's 40B Task Force members, and I would therefore like your opinion on the issue:

1. What would be the opinion of your community's leaders on this issue: would they support the counting of all of the ownership units or would there no strong opinion on it?
2. Have any of you had the opportunity to determine how many school children are generated in 40B developments for  
(1) rentals and (2) ownership developments? To date, Marlborough has an average of 10 school students per 100 40B rental units; however, we have no experience with 40B ownership units.
3. Are there any other factors that would warrant the counting rental and ownership units differently? In your opinion, do rental and ownership developments of the same size produce similar or different impacts? What kind of 40B developments (i.e., rental or ownership) are your communities experiencing? Are developers making these decisions on their own or are your communities influencing whether rental or ownership applications are submitted?

Next Tuesday, May 27th is our last meeting; therefore, if at all possible, I would appreciate a response by Thursday or Friday of this week.

As always, thanks for your assistance and sound advice.

Al Lima

From: Richard Harris [mailto:[planning@southhadley.org](mailto:planning@southhadley.org)]  
Sent: Wednesday, May 21, 2003 8:43 AM

To: Al Lima; massplanners@cs.umb.edu  
Subject: RE: [massplanners] Chapter 40B ownership units

I am certain that South Hadley leaders support counting all of the units in the 40B development regardless of ownership status - particularly if all of the units benefitted from the relief from Zoning and Subdivision regulations. We have not conducted any assessment of the 40B developments in terms of school children; however, I live in one such apartment complex and can affirm that the rate of school age children is much higher than 10 children per 100 units. We do not have any ownership units under 40B.

Richard Harris, AICP  
Town Planner  
Town of South Hadley

From: Sheehan, Andy [mailto:asheehan@townhall.chelmsford.ma.us]  
Sent: Wednesday, May 21, 2003 8:40 AM  
To: 'Al Lima'; massplanners@cs.umb.edu  
Subject: RE: [massplanners] Chapter 40B ownership units

Al,

1. Chelmsford would strongly support the counting of 100% of ownership units, the same as rental units. This change will not get us to 10%, but it would get us a lot closer than we are likely to get otherwise.
2. We have not done an analysis of school-age children in 40B projects.
3. We see no reason to count rental projects differently from ownership projects. In the past year we have seen a mix of project types: 2 rental projects (144 and 84 units) and 2 ownership projects (56 and 30 units). The next two that we are expecting are both ownership (32 and 160 units). We have tried to push rental projects so we could count all the units, but some developers are not interested in rentals; they want to build the project, sell the units, and be done with it.

Thanks for the opportunity to provide input.

Andy Sheehan  
Chelmsford

From: Roland Bartl [mailto:rbartl@town.acton.ma.us]  
Sent: Wednesday, May 21, 2003 12:36 PM  
To: Al Lima; massplanners@cs.umb.edu  
Subject: RE: [massplanners] Chapter 40B ownership units

1. I suspect our community leaders would support counting 100% of ownership units just as it is now the case for rental. My opinion? That may get us off the hook faster, but counting 100% units in any kind of project does not address the real need if only 25% or so are really affordable. It is just another smoke screen. Rather, I would like changes that acknowledge the presence of unrestricted affordable units in each community. Yes, they

have to be verified periodically, but at least the regulations would be tailored to better reflect reality.

2. We did some spot checks on the number of school children in multi-family housing development. They were no 40B but did include some Section 8 units. We came up with +/- 1/3 school-aged child per unit.
3. Nobody has presented me with a logical rationale for treating rental projects differently from ownership projects. Developers here tend to propose ownership projects. Most of them are not set up or have the experience to be landlords at a large scale. Not much effort here to change that.

Roland Bartl, AICP  
Town Planner, Town of Acton  
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Acton, MA 01720  
978-264-9636

From: Thomas Bott [mailto:Thomas\_Bott@mma.org]  
Sent: Wednesday, May 21, 2003 1:18 PM  
To: Roland Bartl  
Cc: Al Lima; massplanners@cs.umb.edu  
Subject: Re: RE: [massplanners] Chapter 40B ownership units

Both affordable and rental units are, I believe, viewed with suspicion by locals. I was under the impression that the 100% rental was a carrot for towns to accept rental units. In addition to a need for affordable housing there is a need for rental units esp. here on the South Shore.  
Tbott

From: McCarthy, Richard [mailto:RMcCarthy@town.raynham.ma.us]  
Sent: Wednesday, May 21, 2003 6:28 PM  
To: 'Al Lima'; massplanners@cs.umb.edu  
Subject: RE: [massplanners] Chapter 40B ownership units

Al,  
The town of Raynham town officials after completion of our Master Plan became proactive regarding 40B even though there is strong local opposition to 40B I must report that the town has reached the magic number of 10%. From my point of view I would strongly recommend counting all units.

For the most part citizens feel its not fair that a developer can put in 5 times the number of homes in an area that under conventional zoning allows 1. If all the units counted it might be more tolerable because one of the benefits of a rental project is that all the units count.

I ask the task force to look closely at the regs regarding counting units. The regs are written in such a way maintaining 10% is like a dog trying to catch its tail.

Is there discussion about increasing state aid to towns that add 40B units significantly, it might change local opinion because of capital facility impacts?

I think the Planning Board should do 40B, they are better equipped.

Lastly, I'm not sure the private sector should be in the affordable housing business. New England Fund projects have been a nightmare. You need an accountant and a numbers expert before you get into real issues because reviewing the numbers is like a shell game. Why would a private sector developer (profit motive) in the 40b business unless the risk reward was worth it.

Richard McCarthy

From: Lacy, Jeff (MDC) [mailto:Jeff.Lacy@state.ma.us]  
Sent: Thursday, May 22, 2003 10:02 AM  
To: massplanners@cs.umb.edu  
Subject: [massplanners] 40B

Al:

Just a quick response to your recent inquiry.

I agree with the commentators who suggested planning boards as being better equipped to handle a 40B application, especially as these proposals move out away from urban areas and often look like subdivisions.

I would also support the counting of all affordable units, rental or not. Rural towns do not have a history or tradition of multi-family rental housing, nor are they likely to build in that style. In fact most rural communities will never attain 10%. But every unit they do build should count.

Thanks for the opportunity to comment.

Jeffrey R. Lacy, AICP  
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From: Justin Woods [mailto:jwoods@townofnorthandover.com]  
Sent: Thursday, May 22, 2003 12:24 PM  
To: 'Al Lima'; massplanners@cs.umb.edu  
Subject: RE: [massplanners] Chapter 40B ownership units

Al,

Deputy Chief Burrington spoke with great enthusiasm about smart growth, urban investment and redevelopment at the Essex County Community Foundation Smart Growth Symposium. However the current design of 40B often fosters the consumption of open space resulting in sprawl in rural and suburban communities. At the MAPD conference last week, Deputy Chief Burrington suggested the possibly of allowing a regional or inter-municipal approach to resolving the affordable housing problem. It seems to me that this would be a positive way to proceed with creating new and redeveloping affordable housing that is consistent with the principles of smart growth.

Often communities like North Andover, Billerica and Dracut, which abut urban centers like Lowell and Lawrence, have a very difficult time trying to reach the 10% requirement and the cities have in excess of 20%. Allowing an inter-municipal approach towards some percentage of the 10% would allow these communities and similar ones to more quickly reach the 10% mark alleviating them from the developer biased 40B process.\*\* To this end, it seems only logical that most municipalities would support counting all of the ownership units.

Additionally, it is important that we get past the notion that only subsidized housing count as affordable. Market rate housing should be counted regardless of the type (i.e. trailers, condos, apartments, houses) as long as the housing is affordable.

\*\*It is not my intention to make it seem that the cities should have to bear all of the state's affordable housing. On the contrary, municipalities should be required to have some percentage of affordable housing and they should be penalized for not working towards getting there, but municipalities need relief from 40B so that they can effectively and creatively plan for creating more housing without promoting more sprawl or ending up with inappropriate developments in badly chosen locations. This will take a lot of financial and technical assistance for municipalities from the state to educate municipal planners and leaders how to implement planning and zoning bylaws that will reverse this trend. There is an unfounded fear about mixed use and density that I hope the Romney Administration and the EOCD can help dispel.

Thanks again for the opportunity to comment.

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From: Szklut, Jay [mailto:jszklut@town.hull.ma.us]  
Sent: Thursday, May 22, 2003 2:58 PM  
To: Roland Bartl; Al Lima; massplanners@cs.umb.edu  
Subject: RE: [massplanners] Chapter 40B ownership units

I agree with Roland's comments on not counting 100% of units as affordable. Yes, my community leaders would want to count all units, whose wouldn't? Additionally, I find it paradoxical that the same individuals that say 40b is not an affordable housing program want to count market rate units in their affordability count.

Why should rental projects be treated differently then ownership? Because they are different. They target different sectors of the population, they service different demographic groups, and their management and impact on communities differ. Is there anyone out there at 50% of median income that is a prospective home buyer? I want to hear an argument on why they should be treated the same.

Lastly, as long as I'm rambling on, I'm concerned that a policy question is becoming more and more a political concern. If creating affordable housing is a good and/or necessary policy, why are we focusing on how municipalities can make end runs around the law. If we want to increase the number of units that count as affordable (Section 8, illegal apartments, etc.) then we should also look at the 10% guideline. Ten percent is an arbitrary number chosen to reflect the amount of subsidized housing a community should have. If we want to look at the amount of housing that should be affordable to persons at 80% of median or less then, mathematically, 40% of the housing in each community should be so.

I've heard all the arguments about losing local control, but I don't see any changes that would strengthen local control while still requiring communities to permit affordable housing. All the changes seem to be directed at allowing communities to skirt their obligation to provide housing for all incomes.

Jay S.  
Town of Hull